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Leslie T. Gladstone, Chapter 7 Trustee

UNITED STATES BANKRUPTCY COURT

Southern District of California

In re

JAMES CHESTER WESEMAN and
LORI MORSE WESEMAN,

Debtors.

Case No. 10-11927-LT7

Chapter 7

**MOTION FOR ORDER ESTABLISHING
BIDDING AND SALE PROCEDURES**

Date: January 14, 2016
Time: 10:00 a.m.
Dept.: 3
Judge: Laura S. Taylor

Leslie T. Gladstone, chapter 7 trustee (“Trustee”) for the estate of James Chester Weseman and Leslie Morse Weseman (the “Debtors”), hereby moves (the “Motion”) this Court for an order establishing bidding and sale procedures in connection with the sale of 467,000 shares of Invivoscribe Technologies, Inc. common stock free and clear of interests, liens and encumbrances pursuant to section 363.

I.

BACKGROUND

A. The Debtors and Shares of Stock Owned

On July 6, 2010, the Debtors filed a petition under chapter 7 of the Bankruptcy Code. Leslie T. Gladstone was appointed as the chapter 7 trustee. (Dkt. No. 7.) The Debtors own 467,000 shares of Invivoscribe Technologies, Inc. (“Invivoscribe”) common stock (the “Stock”).

1 **B. Offer to Purchase the Stock**

2 The Trustee has received an offer from Jeffrey Miller, PhD. (“Miller”), Founder, Chairman
3 of the Board, President, Chief Executive Officer and Chief Science Officer of Invivoscribe, to
4 purchase the Stock for \$57,000.00 (the “Miller Bid”). The Trustee and Miller entered into an
5 Agreement for Purchase and Sale of Stock (the “Agreement”), a copy of which is attached hereto as
6 **Exhibit A**, which sets forth the terms and conditions of the sale of the Stock to Miller. The sale of
7 the Stock to Miller is subject to overbid and bankruptcy court approval. The Agreement provides
8 that if the stock is sold to an overbidder or any person other than Miller (or his designee), the Trustee
9 shall pay a \$3,000 break-up fee to Miller (the “Break-Up Fee”). To the Trustee’s knowledge, the
10 Stock is free and clear of liens, encumbrances and interests.

11 **II.**

12 **THE PROPOSED BIDDING AND SALE PROCEDURES**

13 The Trustee believes that the following bidding and sale procedures (the “Bidding
14 Procedures”) constitute the best method to maximize the proceeds from the sale of the Stock.

15 **A. Marketing Procedures**

16 The Trustee is in the process of contacting third parties previously expressing an interest in
17 purchasing miscellaneous assets from bankruptcy estates. The Trustee will also notify the other
18 shareholders of Invivoscribe of the opportunity to make overbids for the purchase of the Stock. In
19 addition, the Trustee will advertise the sale on the National Association of Bankruptcy Trustees
20 website. The Trustee requests that this Court determine that such marketing is reasonable and
21 appropriate in connection with the sale.

22 **B. Bidding Procedures**

23 1. The Trustee intends to conduct an auction sale of the Stock, as set forth below, to
24 determine the highest and best sale price for the Stock. The Trustee will only consider bids that
25 meet the requirements set forth in the bidding procedures below, as may be approved by the
26 bankruptcy court, and that are submitted by a bidder who satisfies the criteria for becoming a
27 qualified bidder (a “Qualified Bidder”). Bidders desiring to become a Qualified Bidder will be
28 required to submit the following on or before **noon (Pacific Time) on the fourth business day prior**

1 **to the Auction:** (a) information concerning the bidder's financial ability to complete the proposed
2 purchase of the Stock by not later than **February 19, 2016** on substantially the same terms and
3 conditions as set forth in the Agreement; and (b) a cashier's check in the amount of \$10,000 (a
4 "Deposit").

5 2. The Trustee reserves the right, in her reasonable business judgment, to determine
6 whether a person is a Qualified Bidder. The Trustee shall notify each party who has submitted the
7 required information and Deposit whether that person is a Qualified Bidder no later than three
8 business days prior to the Auction. Miller has satisfied these requirements and is a Qualified Bidder.

9 3. All due diligence, if any, in connection with the Stock and Invivoscribe must be
10 completed prior to the Auction.

11 **C. Auction Procedures**

12 1. An auction sale of the Stock (the "Auction") will be conducted **two business days**
13 **prior to the Sale Hearing at 10:00 a.m. (Pacific Time)** at the offices of Mintz Levin Cohn Ferris
14 Glovsky and Popeo, P.C., 3580 Carmel Mountain Road, Suite 300, San Diego, California 92130, or
15 such other place as the Court so directs. Qualified Bidders and their representatives may participate
16 in the Auction by telephone or in person. Only Qualified Bidders and their representatives may
17 participate in the Auction. The Trustee may continue or adjourn the Auction from time to time with
18 the announcement of the first adjournment to the made at the original Auction date.

19 2. The initial overbid at the Auction will be \$62,000 (the "Initial Overbid"). Overbids,
20 after the Initial Overbid, must be in increments of at least \$1,000. All overbids are binding. Any
21 bidders submitting overbids will bear their own expenses in connection with the submission of
22 overbids, the Auction and the sale, regardless of whether the sale is approved.

23 3. Bidding at the Auction will continue until the Trustee determines, in her business
24 judgment and discretion and subject to confirmation by the Court, the highest and best overbid (the
25 "Recommended Overbid"). The Recommended Overbid and the second-highest Overbid (such bid,
26 the "Back-Up Bid" and such bidder, the "Back-Up Bidder") will be irrevocable until the later of
27 (a) three business days after the Closing Date; or (b) the closing of the sale to the bidder which
28 submitted Recommended Overbid.

1 4. Before the conclusion of the Auction, the individual or entity that is determined to
2 have made the Recommended Overbid shall complete and sign all agreements, contracts,
3 instruments or other documents evidencing and containing the terms and conditions upon which the
4 Recommended Overbid was made.

5 5. Each Qualified Bidder participating in the Auction will be required to confirm that it
6 has not engaged in any collusion with respect to the bidding or the sale.

7 6. The Trustee may make reasonable revisions or additions to these Bidding Procedures
8 at the Auction.

9 **D. Sale Procedures**

10 1. The Trustee requests that the Court schedule a hearing (the “Sale Hearing”) to
11 consider entry of an order (the “Sale Order”) approving of the sale of the Property to the
12 Recommended Overbid (as defined below) or to Miller, if no overbids are made by a Qualified
13 Bidder not later than **February 12, 2016**.

14 2. At the Sale Hearing, the Court may approve the sale of the Property (such approved
15 bid, the “Successful Bid” and such bidder, the “Successful Bidder”). Due to Miller’s requirement
16 that the sale be consummated promptly due to the inherent uncertainty of stock prices in general, the
17 Trustee requests that any sale order specifically waive Federal Rule of Bankruptcy Procedure
18 6004(h).

19 3. If a Qualified Bidder is not the Successful Bidder or the Back-Up Bidder, as
20 determined by the Court at the Sale Hearing, the Deposit made by such Qualified Bidder will be
21 returned within fifteen days after entry of the Sale Order or a final order denying a sale.

22 4. The Successful Bidder will be required to close no later than (a) if the stay provided
23 for by Federal Rule of Bankruptcy Procedure 6004(h) is not waived, the first business day after the
24 Sale Order becomes final and non-appealable and all closing conditions in the Successful Bidder’s
25 purchase agreement are satisfied or waived; or (b) if the stay provided for by Federal Rule of
26 Bankruptcy Procedure 6004(h) is waived, the first business day after entry of the Sale Order on
27 which all closing conditions in the Successful Bidder’s purchase agreement are satisfied or waived
28 (the earlier of which shall be referred to as the “Closing Date”). In the event that the sale to the

III.

WHEREFORE, the Trustee requests that the Court enter an order:

- Dated: December 16, 2015

Attorneys for
Leslie T. Gladstone, Chapter 7 Trustee